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SIPDIS

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SUBJECT: SRI LANKA'S FIRST HIGH PROFILE IPR RAID

1. Summary: Sri Lankan Police recently raided a CD manufacturing plant operated by a Board of Investment approved company. The plant produced music, movie and software discs, violating the intellectual property rights (IPR) of several US producers. The investigation and prosecution will be a test case of Sri Lanka's ability and willingness to protect IPR. The case will also be a learning experience for the IPR enforcement arm of the Sri Lankan police. End Summary.

Factory Found

2. On October 9, 2004, Sri Lankan Police raided a previously unknown CD manufacturing plant, Optical Media Pvt Ltd. The police had been investigating other criminal activity when they found the illicit disk printing operation. The plant, owned and operated by Malaysian nationals, had been in operation since early 2004. The police confiscated a large number of CDs, offset plates, stampers and also took into custody one Malaysian national. According to information, approximately 10 Malaysians were involved with the plant, many leaving Sri Lanka following an August raid of a leading music store in Colombo. Ironically, Optical Media is a Board of Investment (BOI), the GSL's foreign investment promotion agency, approved company. BOI had not monitored the operation and was not aware of the nature of the operation.

3. The plant produced CDs using polycarbonate resin (thus making it possible to calculate the number of CDs and DVDs pirated - something industry representatives have offered to do), and had counterfeited music, movie and software products. The police have been informed that a truck removed approximately 175,000 disks and some stampers the night before the raid. It is reliably understood the plant owners had close connections to owners of the music store that was previously raided. Following the raid, the police also raided the main bazaar in Colombo and confiscated a large number of Optical Media products. The news of the raids has spread to other counterfeit CD sellers. Most of the shops have stopped displaying counterfeit copies of the Eagle brand produced by the plant. The case has been now handed over to the Criminal Investigation Division (CID) of the Police.

Embassy Role

4. Soon after the raid, the Embassy began monitoring the case. Ambassador wrote letters to the Police Chief and Minister of Trade, prompting the Inspector General of Police to order the transfer of investigations to CID's Commercial Crime Unit. US Customs and the International Federation of the Phonographic Industry (IFPI) have trained this unit on IPR investigations. Econoff also wrote letters to the Solicitor General requesting his assistance in obtaining a full inventory of seized goods and to Police offering expert assistance through IFPI and Microsoft. Econ staff also met with Police on several occasions and spoke to Government Director of IPR. Post also facilitated IFPI and Microsoft visits to study the case, meet investigators and visit the raided factory. IFPI has been advising the police regarding the investigation. Post's public/private IPR Working Group, which includes many affected IP rights holders, has been a driving force in the coordination of Embassy and private participation in the case.

Case and Problems

5. Problems: This is the first big IPR case here and follows the enactment of a new comprehensive IPR law in 2003. The case has revealed many problems in IPR enforcement. These

include: the police officers who raided the plant, obviously unfamiliar with IPR, failed to make a detailed inventory when handing over the confiscated goods to court custody. The Police also lack equipment to test CDs in various stages of production, expertise in technology and English proficiency. The raid also found offset plates, which police were slow in identifying as the master copies of the IP materials. These events have delayed identification of seized goods. The IP rights holders are now preparing the inventory with court permission. In addition, the police still need to pursue other vital clues in the case. The police need to check computers and other equipment lying in the plant for evidence. They also need to ascertain import details of the polycarbonate and export details from the factory. Further, they need to locate the 175,000 CDs and stampers that went missing from the plant on the eve of the raid.

16. Prosecution: The case is currently being heard at a local magistrate court in a Colombo suburb, where the magistrate is not familiar with IPR law. It is feared that the Magistrate will release the accused Malaysian in custody who is willing to plead guilty and be deported. This has prompted a local representative of music and movie labels to obtain a restraining order from the Court of Appeal preventing the magistrate from concluding the case pending investigation. CID now needs to conclude the investigation and frame charges. CID also hopes to request a transfer of the case to a higher court in Colombo.

17. Copyright holders: The majority of the disks were movies from Warner, Paramount, Miramax, Fox and Universal. The balance were music disks from Sony and Universal as well as some software belonging to Microsoft. Local representatives are present in Colombo for Warner, Paramount, Miramax, Sony and Universal. Fox and MGM are not represented in Colombo. Post has written to MPA seeking assistance to locate Fox and MGM representatives in the area. The police found several hundred Chinese Microsoft disks, which led officials to conclude these were for export to a Chinese speaking country. IP rights holders hope to file cases separately.

18. Although the sale of counterfeit CDs and DVDs was common, until now there was no knowledge of counterfeit CD production facilities in Sri Lanka. Local officials assumed disks on sale were being imported to Sri Lanka from other parts of Asia. This assumption focused right holders and Post to push police and customs officers to investigate at points of entry and sale.

19. The large numbers of disks involved and the BOI status of the company are leading officials to conclude this enterprise was manufacturing illegal disks for export as well as local consumption. Rights holders are supporting the forensic investigation of the crime scene as well as the ultimate destination(s) of the manufactured products.

Action Plan -----

10. Post plans to monitor the progress of the case, assist U.S. rights holders and persuade local officials, where necessary, of the important and serious nature of this case for Sri Lankan IPR related business development. Sri Lanka had six recent International Visitor program attendees return from an IPR program in September. Post is using these IV graduates to provide advice on working within the Sri Lankan legal system to promote the importance of IPR and this case as a test to Sri Lanka's IPR legislation.
LUNSTEAD